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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 JOHN MICHAEL SHERWOOD, et
14 al.,

15 Defendants.

CASE NO. CR22-0127JLR

ORDER

16 **I. INTRODUCTION**

17 Trial in this matter is set for July 19, 2024. On June 24, 2024, Defendant John
18 Michael Sherwood filed a motion to proceed *pro se*. (6/24/24 Mot. (Dkt. # 83); *see also*
19 6/25/24 Resp. (Dkt. # 85).) The court held a hearing on July 1, 2024, and denied the
20 motion on the record, making clear that it found that the motion was filed for the purpose
21 of delay. (7/1/24 Min. Entry (Dkt. # 90).) This order sets forth the court's reasoning for
22 denying the motion.

II. BACKGROUND

The court previously set forth the procedural background of this case in detail in its June 12, 2024 order denying Mr. Sherwood's motion for a continuance. (*See* 6/12/24 Order (Dkt. # 80) at 2-5.) The court incorporates that case history here, and provides additional background as set forth below.

On June 19, 2024, one week after the court denied Mr. Sherwood's latest motion for a continuance, defense counsel filed a motion requesting withdrawal and substitution of counsel. (6/19/24 Mot. (Dkt. # 81).) At a hearing two days later, defense counsel stated Mr. Sherwood insisted on withdrawal based on a lack of trust in his attorneys. (*See* 6/21/24 Min. Entry (Dkt. # 82).) Mr. Sherwood represented that he would need a continuance if he received substitute counsel. The court denied the motion from the bench, specifically finding it was filed for dilatory purposes. (*See id.*) Mr. Sherwood verbally moved to proceed *pro se*, and later filed the instant motion for self-representation through counsel. (*See generally* 6/24/24 Mot.; *see also id.* at 5-7 (suggesting without explicitly requesting that the court appoint standby counsel).) On July 1, 2024, the court again held a hearing and inquired whether Mr. Sherwood would seek a continuance if the court permitted him to proceed *pro se*. He answered affirmatively. As noted, the court denied the motion from the bench, stating a written order would follow. (*See* 7/1/24 Min. Entry.)

III. ANALYSIS

"The Sixth Amendment grants a criminal defendant 'personally the right to make his defense.'" *United States v. Engel*, 968 F.3d 1046, 1050 (9th Cir. 2020) (quoting

1 *Faretta v. California*, 422 U.S. 806, 819 (1975)); *see also* U.S. Const. amend. VI. “If a
 2 defendant’s request to proceed pro se is timely, not for purposes of delay, unequivocal,
 3 voluntary, intelligent and the defendant is competent, it must be granted.” *United States*
 4 *v. Maness*, 566 F.3d 894, 896 (9th Cir. 2009). Conversely, a defendant’s request for
 5 self-representation—known as a *Faretta* request—“need not be granted if it is intended
 6 merely as a tactic for delay.” *United States v. Flewitt*, 874 F.2d 669, 674 (9th Cir.
 7 1989). The Ninth Circuit has “clarified that ‘[d]elay per se is not a sufficient ground for
 8 denying a defendant’s constitutional right of self-representation’ and that
 9 a defendant ‘may not be deprived of that right absent an affirmative showing
 10 of *purpose* to secure delay.’” *Burton v. Davis*, 816 F.3d 1132, 1142 (9th Cir. 2016); *see*
 11 *also id.* at 1151 (“There is a very important distinction between wanting to delay trial for
 12 legitimate reasons and wanting to delay trial for the purpose of securing delay.”).

13 Whether a defendant’s *Faretta* request is motivated by delay is a question of fact
 14 the court must decide based on a totality of circumstances. *Id.* at 1148, 1159. “The
 15 factual findings of a district court in support of its denial of a defendant’s motion to
 16 proceed pro se are reviewed by [the Court of Appeals] only for clear error.” *United*
 17 *States v. George*, 56 F.3d 1078, 1084 (9th Cir. 1995); *see also United States v. Telles*, 18
 18 F.4th 290, 302 (9th Cir. 2021) (noting the Ninth Circuit has not clarified whether it
 19 reviews the ultimate denial of a *Faretta* request de novo or for abuse of discretion). “In
 20 determining whether a defendant’s request to defend himself is a tactic to secure delay,
 21 the court may . . . consider the effect of delay.” *Fritz v. Spalding*, 682 F.2d 782, 784 (9th
 22 Cir. 1982). “A showing that a continuance would be required and that the resulting delay

1 would prejudice the prosecution may be evidence of a defendant’s dilatory intent.” *Id.*
2 (“Where [the defendant]’s pre-trial conduct had already caused substantial delay, a
3 showing that his motion included a request for a continuance would be strong evidence of
4 a purpose to delay.”). In addition, the court may “consider events preceding a motion for
5 self-representation to determine whether the request is made in good faith or merely for
6 delay.” *Flewitt*, 874 F.2d at 675. If the court finds the defendant’s *Faretta* “request is
7 part of a pattern of dilatory activity the court has the discretion to . . . require the
8 defendant to proceed to trial on the scheduled date . . . with the counsel designated.” *Id.*

9 Here, the court found that Mr. Sherwood made his *Faretta* request for dilatory
10 purposes, and the motion was denied for this reason. The charges against Mr. Sherwood
11 concern events that occurred in early 2021, and the case has been pending for nearly two
12 years. (*See generally* Indictment (Dkt. # 1) (filed August 24, 2022).) As the court
13 previously observed, further delay risks prejudicing the Government “given that two
14 witnesses have already passed away during the pending of this case and one percipient
15 Canadian witness cannot be compelled to appear for trial.” (6/12/24 Order at 10; *see also*
16 *id.* at 8 (citing *Barker v. Wingo*, 407 U.S. 514, 521 (1972) (“As the time between the
17 commission of the crime and trial lengthens, witnesses may become unavailable or their
18 memories may fade. If the witnesses support the prosecution, its case will be weakened,
19 sometimes seriously so.”))).)

20 Moreover, Mr. Sherwood has persistently engaged in dilatory conduct. He has
21 twice moved to continue the trial date. (*See* 7/9/23 Mot. (Dkt. # 40); 6/3/24 Mot. (Dkt.
22

1 # 74)). The court granted the first of these motions. (8/2/23 Order (Dkt. # 44)).¹ Mr.
 2 Sherwood has also filed *five* motions for withdrawal of counsel—two seeking substitute
 3 counsel (11/1/23 Mot. (Dkt. # 51); 6/19/24 Mot. (Dkt. # 81)), and three seeking to
 4 proceed *pro se* (1/30/24 Mot. (Dkt. # 65); 2/7/24 Mot. (Dkt. # 68 (stricken and sealed));
 5 6/24/24 Mot.). Of note, Mr. Sherwood’s November 1, 2023 motion for substitute counsel
 6 concerned his former attorney Peter T. Geisness’s unpreparedness for the trial date. It
 7 was Mr. Sherwood’s idea to file that motion, and he withdrew it only when the court
 8 indicated a willingness to grant a continuance. (*See* 11/7/23 Min. Entry (Dkt. # 54); *see*
 9 *also* 11/29/23 Order (Dkt. # 58).) In fact, Mr. Sherwood stated he had no issue with Mr.
 10 Geisness’s representation aside from scheduling issues, and had no objection to
 11 continuing the trial to 2025 or even 2026—up to *three years* from the date of the hearing.
 12 The court ultimately appointed Stephan R. Illa as co-counsel and granted an eight-month
 13 continuance. Thus, this case has been continued a total of three times, including two
 14 lengthy continuances. (12/27/22 Order (eight-month continuance); 8/2/24 Order
 15 (one-and-a-half-month continuance); 11/29/23 Order (eight-month continuance).) Taken
 16 as a whole, the record amply demonstrates a pattern of dilatory activity beginning at least
 17 as early as November 2023.²

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 19 ¹ In December 2022, the Government filed a stipulated motion for a continuance.
 (12/23/22 Stip. Mot. (Dkt. # 28).) The court granted that motion. (*See* 12/27/22 Order (Dkt.
 20 # 30).)

21 ² This pattern of gamesmanship extends perhaps long before November 2023. In 2004,
 Mr. Sherwood was convicted of federal offenses following a jury trial in the Western District of
 22 Texas. *See United States v. Sherwood*, No. 4:04-cr-00191-DC (W.D. Tex.). A review of that
 docket reveals numerous motions to continue, motions for withdrawal and substitution of
 counsel, and motions to proceed *pro se*. *See, e.g., id.* at Dkt. ## 10, 23, 46, 49, 136-37, 139, 152,

Even more damning is the series of events preceding the instant motion. On February 14, 2024, the court permitted Mr. Geisness and Mr. Illa to withdraw based on Mr. Sherwood's stated distrust in them, which allegedly caused a total breakdown in communication and an irreconcilable conflict. (*See* 2/14/24 Min. Entry (Dkt. # 70).) The court appointed Mr. Sherwood's CJA counsel of choice—Carlos M. Santiago, Jr.—conditioned on new counsel's preparedness for a July 19, 2024 trial date. (*Id.*; *see also* CJA Apts. (Dkt. ## 71-72) (appointing Mr. Santiago and Allyson L. Barker).) Notwithstanding the conditional appointment, Mr. Sherwood filed a motion to continue on June 3, 2024, seeking a six-month continuance and a new trial date in January 2025. (6/3/24 Mot.; *see also* 12/23/22 Stip. Mot.; 7/9/23 Mot.)

Among Mr. Sherwood's cited bases for a continuance was the familiar refrain that he needed more time to personally review the voluminous discovery in this case. (*See* 6/3/24 Mot. at 2-3.) The court rejected this argument, concluding that "Mr. Sherwood has had ample time to review the discovery as the court has already granted three prior continuances on this same basis." (6/12/24 Order at 7.³) For this reason, among other

155, 167. The Fifth Circuit affirmed the conviction, rejecting Mr. Sherwood's arguments (among others) that the district court erred in (1) granting his request to proceed *pro se*, (2) denying his mid-trial request to have standby counsel conduct the balance of trial, and (3) denying a continuance of the sentencing hearing. *United States v. Sherwood*, 199 F. App'x 373, 376, 379 (5th Cir. 2006).

³ The court reiterates that the discovery issue is a red herring—a distraction intended to procure delay. Mr. Sherwood has long fixated on a supposed need to personally review every document and to leave no stone unturned. Closely examined, however, many of his discovery demands are far afield and plainly not in alignment with the needs of the case. (*See, e.g.*, 2/7/24 Mot. at 10-11 (email from Mr. Sherwood to Mr. Geisness listing "missing" discovery items from a public beach, including a supposed "love letter and dildo. Where is the love letter and dildo?").) Indeed, during the February 14, 2024 hearing, Mr. Illa stated he had attempted to

1 relevant factors, the court denied Mr. Sherwood’s request for a six-month continuance.
2 (*Id.* at 5-11; *see also id.* at 8 (noting the court’s “serious concerns that the . . . motion to
3 continue was not made in good faith and instead amount[ed] to a delay tactic aimed at
4 obstructing the orderly course of the administration of justice”).)

5 Just *one week* after the court denied Mr. Sherwood a continuance, Mr. Sherwood
6 filed a motion for withdrawal and substitution of counsel. (6/19/24 Mot.) Mr. Sherwood
7 *again* cited distrust in his attorneys—this time, attorneys whom Mr. Sherwood himself
8 had located and proposed to the court. At a hearing, the court inquired into the nature of
9 the conflict. It became clear the conflict stemmed from Mr. Sherwood’s general
10 unreasonableness and his disagreement with his attorneys’ decision not to file a reply in
11 support of his motion to continue, rather than any genuine irreconcilable conflict with his
12 lawyers. In fact, Mr. Sherwood described Mr. Santiago and Ms. Barker as “extremely
13 great” attorneys, and defense counsel represented that Mr. Sherwood was previously
14 cooperative with them. Mr. Sherwood suddenly insisted defense counsel withdraw only
15 after the court denied him a six-month continuance, and Ms. Barker confirmed the
16 withdrawal motion was “very much” Mr. Sherwood’s idea. When asked whether Mr.

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19 explain to his client that the “magic beans” are not in the discovery. More recently, during the
20 June 21, 2024 hearing, the court asked Ms. Barker whether she had ever told her client that
21 defense counsel would not be ready for the trial date. She answered “no,” indicating that the
22 facts of the case did not actually require the additional time Mr. Sherwood sought. The record
makes clear that Mr. Sherwood has received abundant time and opportunity to review the
discovery and to prepare his defense. (*See, e.g.*, 6/25/24 Resp. at 9, Ex. 1 (Dkt. # 85-1) (Mr.
Sherwood’s prison emails stating he has received “thousands of pages of discovery” and “[b]een
deeply involved in reviewing discovery in this case”).) His unceasing demands to personally
review the entire universe of discovery are merely a pillar in a calculated strategy to manipulate
the proceedings and delay this trial.

1 Sherwood would be prepared for the current trial date if the court appointed new counsel,
2 he answered in the negative. The court denied the motion from the bench, specifically
3 finding that it was motivated by delay. (*See* 6/21/24 Min. Entry.) Mr. Sherwood was
4 present in court and, upon hearing the court's ruling, *immediately* moved for
5 self-representation in a verbal outburst. The court directed him to make his motion
6 through counsel pursuant to this District's Local Criminal Rules, Local Rules W.D.
7 Wash. LCrR 62.2(b)(5), and defense counsel filed the motion the following business day.
8 (6/24/24 Mot.) During the hearing on July 1, 2024, Mr. Sherwood stated that he would
9 seek a continuance in the event the court permitted him to represent himself.

10 This sequence of events reveals that Mr. Sherwood's foremost goal is to delay
11 trial. Mr. Sherwood has sought a continuance at nearly every turn—whether by written
12 motion or through his verbal representations to the court—recycling the same excuses
13 despite the court acquiescing to his requests on multiple occasions. He has frequently
14 vacillated between invoking his right to counsel and his right to self-representation, all in
15 an effort to obstruct final resolution of this matter. Mr. Sherwood has cycled through
16 four CJA attorneys, claiming to have lost trust in each and every one—even the attorneys
17 that he personally selected. His latest two motions to discharge counsel immediately
18 followed the denial of yet another lengthy continuance, and both motions were
19 accompanied by further requests to continue the trial date.

20 For all of these reasons, the court finds Mr. Sherwood made his *Faretta* request
21 solely for purposes of delay. *See Telles*, 18 F.4th at 302 (“[Defendant] substantially
22 delayed trial by consistently requesting to substitute his counsel and refusing to work

1 with appointed counsel, and [defendant]’s request to represent himself was accompanied
2 by a request for a continuance. We need no further proof that [defendant]’s *Faretta*
3 request was made for the purpose of the delay.”); *George*, 56 F.3d at 1084 (affirming
4 denial of *Faretta* request where defendant’s pre-trial conduct “had caused substantial
5 delay,” defendant “sought a continuance in conjunction with his motion to proceed pro
6 se,” and “the court had previously denied motions for additional continuances”); *United*
7 *States v. Turner*, 897 F.3d 1084, 1104 (9th Cir. 2018) (affirming finding of dilatory intent
8 where defendant “manipulated the proceedings by vacillating between asserting his right
9 to self representation and his right to counsel” (internal quotation marks omitted)); *United*
10 *States v. Mason*, 17 F. App’x 587, 590 (9th Cir. 2001) (affirming finding of dilatory
11 intent where the district court had granted several prior continuances and the *Faretta*
12 request “appear[ed] to be ‘an impulsive response to the trial court’s denial of his [latest]
13 request’ for a continuance” (quoting *Jackson v. Ylst*, 912 F.2d 882, 888-89 (9th Cir.
14 1990))). The court therefore denies Mr. Sherwood’s *Faretta* request. *Flewitt*, 874 F.2d
15 at 674.

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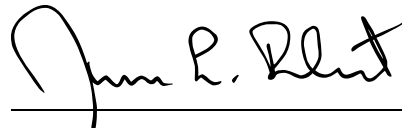
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1 **IV. CONCLUSION**

2 As stated on the record, and for the foregoing reasons, the court DENIES Mr.
3 Sherwood's motion to proceed *pro se* (Dkt. # 83). Mr. Sherwood will proceed to trial
4 through current counsel on July 19, 2024.

5 Dated this 10th day of July, 2024.

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8 JAMES L. ROBART
9 United States District Judge
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